

Decision 02-04-070

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VarTec Telecom, Inc. for a Certificate of Public Convenience and Necessity to Offer Local Exchange and Access Services and to Acquire the Majority Membership Interest in, and the Certificate of Public Convenience and Necessity of Choctaw Communications, LLC.

Application 99-04-011
(Filed April 14, 1999)

ORDER CORRECTING ERROR

The Commission has been informed of an error in Decision 02-04-020. Therefore pursuant to Resolution A-4661,

IT IS ORDERED that Exhibit 1 to Attachment A is replaced with the attached corrected version of Exhibit 1 to Attachment A.

This order is effective today.

Dated April 22, 2002, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

EXHIBIT 1 TO ATTACHMENT A STIPULATION FOR SETTLEMENT

I. THE PARTIES

This STIPULATION FOR SETTLEMENT (Agreement) is entered into this ____ day of May 2000, by and among the following persons, hereinafter collectively referred to as the "Parties":

- CONSUMER SERVICES DIVISION (CSD) of the CALIFORNIA PUBLIC UTILITIES COMMISSION (COMMISSION);
- VARTEC TELECOM, INC. (VARTEC);
- U.S. REPUBLIC COMMUNICATIONS, INC.
- (U-5773-C.)(U.S. REPUBLIC), a switchless reseller of intra- and inter-LATA telephone services within California; and
- The stockholders, directors, officers, employees, agents, predecessors, successors-in-interest of, and any person or corporation affiliated with, VARTEC and/or U.S. REPUBLIC.

This Agreement shall become effective and binding on the date when all the Parties have signed it.

II. RECITALS

WHEREAS, since 1996 VARTEC has owned, controlled, operated, and directed U.S. REPUBLIC as a majority - owned subsidiary;

WHEREAS, VARTEC on April 14, 1999, applied for Commission authority in A.99-04-011 for the following: (i) to provide local exchange and access telephone services in California, and (ii) to purchase a majority membership interest in Choctaw Communications, L.C. (U-6008-C), a switchless reseller of local- and inter-exchange telecommunications services within California;

WHEREAS, on September 3, 1999, CSD protested VARTEC's application alleging that VARTEC's majority-owned subsidiary, U.S. REPUBLIC, was billing California consumers without their authorization a monthly recurring service fee (not including

State and Federal taxes and other charges) of approximately TWENTY-FOUR DOLLARS and NINETY-FIVE CENTS (\$24.95) for internet worldwide-web services and/or other charges. The billings began appearing in July 1998 on consumers' monthly telephone billing statements sent by their local exchange carrier (LEC) (e.g., Pacific Bell or GTE);

WHEREAS, effective March 7, 1999, in California U.S. REPUBLIC ceased soliciting LEC-billed web-hosting services and as of October 5, 1999, ceased operating any web-hosting services;

WHEREAS, on December 24, 1999, U.S. REPUBLIC entered into an agreement to sell its California long distance customer bases and other related assets to ALLIANCE GROUP SERVICES, INC. (ALLIANCE) (U-6047-C);¹

WHEREAS, U.S. REPUBLIC will liquidate and dissolve as an on-going business after selling its consumer bases and will request herein and in an All Party Joint Motion that the Commission cancel its Certificate of Public Convenience and Necessity (CPCN);²

WHEREAS, this Agreement is only for settlement purposes and constitutes no admission by VARTEC and/or U.S. REPUBLIC that they have violated any California statute or Commission rules or regulations;

WHEREAS the Parties hereby agree to compromise, settle, and adjust all issues that have been or could have been asserted in A.99-04-011 as protested by CSD and based on the terms and conditions set forth in this Agreement.

¹ Alliance was given Commission authority to resell intra- and inter-LATA telephone services in D.98-08-069, approving A.98-07-045 (filed July 27, 1998).

² Letter from Carol Even, Regulatory Coordinator, U.S. REPUBLIC, to the Commission, dated January 6, 2000; letter from Milton G. Hammond, Legal Counsel, VarTec, to Cleveland W. Lee, Commission Staff Counsel, dated November 8, 1999.

III. TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the foregoing and the mutual terms, covenants, and/or conditions herein stated, the parties themselves or by their authorized representative hereby agree as follows:

1. Within TEN (10) calendar days or less after the Parties have executed this Agreement, CSD will submit for restitution to VARTEC and/or U.S. REPUBLIC, a list of California consumers who have complained during (but not limited to) the period from July 1, 1998, through February 29, 2000, to their local exchange carrier (LEC) or the Commission's Consumer Affairs Branch (CAB), regarding U.S. REPUBLIC billings for web-hosting charges, Internet-related service fees, or other charges allegedly unauthorized by the consumer. This list(s) (hereinafter referred to as the "CSD Consumer Data") will include the consumer's name, billing address, billing telephone number (BTN), or other data and is subject to the Non-Disclosure and Protective Agreement signed by VARTEC and U.S. REPUBLIC with Pacific Bell on December 30, 1999, which is incorporated by reference as if fully set forth herein.

2. Within ONE HUNDRED TWENTY (120) calendar days after receiving the CSD Consumer Data described above (hereinafter referred to as the "ONE HUNDRED TWENTY (120) Day Period"), VARTEC and/or U.S. REPUBLIC shall fully reimburse the consumers presented in the CSD Consumer Data for any and all amounts billed and collected by U.S. REPUBLIC, in the following manner unless otherwise reported to CSD:

- VARTEC and/or U.S. REPUBLIC will mail consumers a company check made payable to the consumer and in an amount corresponding to the amount of charges billed and collected by U.S. Republic, which has not previously been credited or reimbursed by the consumer's LEC, VARTEC, or U.S. REPUBLIC;

- All U.S. Republic charges that were unauthorized and not yet paid by the consumer or uncollected by VARTEC and/or U.S. REPUBLIC, shall be canceled by VARTEC and/or U.S. REPUBLIC;
- VARTEC and/or U.S. REPUBLIC will send the checks in sufficient time to afford each consumer recipient at least NINETY (90) calendar days following the date of mailing, to deposit or cash the check;
- All checks will have an expiration date, not later than the last day of the ONE HUNDRED TWENTY (120) Day Period;
- VARTEC and/or U.S. REPUBLIC will include with each reimbursement check an explanation for the reimbursement, the time allowed for deposit or cashing of the check, and the expiration date thereof.

3. For those consumers whom VARTEC and/or U.S. REPUBLIC cannot credit or otherwise reimburse because of an erroneous mailing address or other circumstance preventing restitution, VARTEC and/or U.S. REPUBLIC shall make reasonable efforts to correct the problem (e.g., request the LEC for a forwarding mailing address) prior to the expiration of the ONE HUNDRED TWENTY (120) Day Period.

4. Within FIVE (5) calendar days after the end of the ONE HUNDRED TWENTY (120) Day Period, VARTEC and/or U.S. REPUBLIC shall remit to the Commission in the form of a company check made payable to the Commission, an amount corresponding to the total sum of all company reimbursement checks that were undeliverable or expired as of such date. The remittance shall be delivered to CSD Supervising Special Agent Mark Clairmont at 505 Van Ness Avenue, San Francisco CA 94102-3298. After receipt thereof, the Commission shall deposit the check into the General Fund of the State of California. VARTEC and/or U.S. REPUBLIC shall have no further duty of restitution under this Agreement to a consumer to whom a company reimbursement check was sent but became undeliverable or expired and was consequently remitted to the Commission.

5. Within FIVE (5) calendar days after the end of the ONE HUNDRED TWENTY (120) Day Period, VARTEC and/or U.S. REPUBLIC shall report in writing to CSD Supervising Special Agent Mark Clairmont (same address as stated above), the following data for each consumer presented in the CSD Consumer Data:

- the consumer's name, address, BTN, and beginning and ending dates of service;
- the total amount billed and collected by U.S. REPUBLIC's;
- the amount of credit or reimbursement received by the consumer for U.S. REPUBLIC charges;
- the total sum that VARTEC and/or U.S. REPUBLIC is remitting to the Commission as a result of undeliverable or expired company reimbursement checks; and
- the name, address, and BTN of the consumer whose reimbursement is being remitted to the Commission.

6. As soon as practicable after receiving VARTEC and/or U.S. REPUBLIC's Report, CSD shall review whether VARTEC and/or U.S. REPUBLIC have fully reimbursed all the consumers presented in the CSD Consumer Data. If CSD concurs and so states in writing, VARTEC and/or U.S. REPUBLIC will prepare a declaration within TEN (10) calendar days or less thereafter, which will be attached to the Agreement and filed with the Commission. Such declaration shall be signed by an officer of VARTEC and/or U.S. REPUBLIC under oath attesting that the statements therein are true and accurate, and declare the following:

- the total number of California consumers reimbursed pursuant to this Agreement;
- the total sum of such reimbursements; and
- the total sum remitted to the Commission by VARTEC and/or U.S. REPUBLIC as result of undeliverable or expired company reimbursement check.

7. After VARTEC and/or U.S. REPUBLIC have performed all the terms and conditions in Paragraphs 1 through 6 above, the Parties shall as soon as practicable file an All Party Joint Motion for Commission approval and adoption of

this Agreement. The Motion shall also include (i) CSD's request to withdraw its September 3, 1999, Protest of VARTEC's Application, A.99-04-011; and (ii) VARTEC and U.S. REPUBLIC's request to have the Commission cancel U.S. REPUBLIC's operating authority effective as of the date of the Commission decision. CSD will close its investigation of U.S. REPUBLIC also on the same date.

8. VARTEC and/or U.S. REPUBLIC further agree to credit or otherwise reimburse California consumers (i) who were not included in the CSD Consumer Data; (ii) who complained on or after March 1, 2000, to their LEC, CAB, U.S. REPUBLIC, or VARTEC, that U.S. REPUBLIC billed them without their consent for web-hosting charges, related service fees, and/or other charges; (iii) who can provide reasonable proof (e.g., telephone billing statements) of such unauthorized charges; and (iv) for whom VARTEC or U.S. REPUBLIC has no reasonable proof of prior consumer authorization.

9. VARTEC and/or U.S. REPUBLIC will cease any bill collection efforts, if any, to compel payment by any California consumer described above, of any web-hosting or telephone service fees, billings, charges, and/or balances that was unauthorized by the consumer. Further, VARTEC and/or U.S. REPUBLIC will direct any bill collection services in writing to purge any records referencing any consumers' nonpayment of past or present outstanding debts owed to VARTEC and/or U.S. REPUBLIC that is attributable to such unauthorized billing by U.S. REPUBLIC.

10. VARTEC and U.S. REPUBLIC agree to be jointly and severally responsible in performing the duties and obligations of this Agreement. VARTEC further guarantees unconditionally and irrevocably U. S. REPUBLIC's performance under this Agreement. If U. S. REPUBLIC is sold, dissolved, or otherwise unable to perform its duties and obligations as set forth in this Agreement, VARTEC shall immediately assume and perform such responsibilities.

11. VARTEC and/or U.S. REPUBLIC will immediately comply with all Commission statutes, rules, or regulations.

12. CSD will recommend that in this proceeding the Commission impose no fines, penalties or any remedies other than those set forth in this Agreement.

13. This Agreement is subject to approval and adoption by the Commission. The Parties agree to furnish such additional information, documents, and/or testimony as the Commission may request in reference to the Agreement and/or Motion.

14. The Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Agreement. No Party may bring an action pertaining to this Agreement in any local, state, federal court or administrative agency without first having exhausted its administrative remedies at the Commission.

15. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and Commission rules and regulations.

16. The Parties agree that no signatory to this Agreement or any employee of the Commission, VARTEC, or U.S. REPUBLIC assumes any personal liability because of this Agreement.

17. The Parties each agree to execute and/or shall cause to be executed, any other documents or to take any other action as may be necessary to effectively consummate this Agreement.

18. No Party shall have any authority to bind any other Party executing this Agreement or to act as an agent or representative for any other Party unless expressly authorized in writing by such other Party.

19. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors, purchasers, heirs, assigns, partners, representatives, parent companies, subsidiary companies, affiliates, divisions, units, agents, employees, attorneys, officers, directors, and/or shareholders.

20. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original and shall together constitute the same Agreement.

21. The provisions of this Agreement are not severable. If any Party fails to perform its respective obligations under this Agreement, the Agreement may be regarded as rescinded. Further, if the Commission or any court of competent jurisdiction overrules as legally invalid or modifies any material provision of this Agreement, then this Agreement shall be deemed entirely rescinded.

22. Each Party represents that it has investigated the facts and law pertaining to the matters described in this Agreement. No Party has relied or presently relies upon any statement, promise or representation by any other Party, whether oral or written, except as specifically set forth in this Agreement. Each Party expressly assumes the risk of any mistake of law or fact made by such Party or its authorized representative.

23. The undersigned hereby acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency and/or employment.

24. The Parties acknowledge and stipulate that this Agreement is fair and not the result of any fraud, duress, or undue influence by any other Party. Each Party hereby states that it has read and fully understand its rights, privileges, and duties under this Agreement. Moreover, each Party has had its respective attorney or other authorized person review the terms of this Agreement. Therefore, by executing this Agreement each Party declares that the provisions herein are adequate, reasonable, and mutually agreeable; and that they are entering this Agreement freely and voluntarily.

25. This Agreement is the entire agreement among the parties, which cannot be amended or modified without the express written consent of all the parties.

26. The Parties jointly request the Commission to retain jurisdiction of this case and over the Parties personally until final performance of the Agreement stated herein.

IV. CONCLUSION

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the date hereof.

CONSUMER SERVICES DIVISION,

By:

William R. Schulte Director
Director

Date: 6/5/00

By:

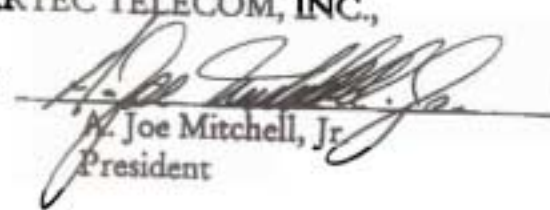


Date: 5/31/00

Cleveland W. Lee
Staff Counsel
Attorney for CONSUMER SERVICES DIVISION

VARTEC TELECOM, INC.,

By:



A. Joe Mitchell, Jr.
President

Date: May 25, 2000

By.

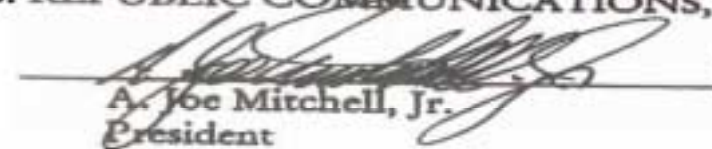


May 25, 2000

Melissa A. Smith
Attorney for VARTEC TELECOM, INC.

U.S. REPUBLIC COMMUNICATIONS, INC.,

By:



A. Joe Mitchell, Jr.
President

Date:

May 25, 2000



Date:

May 25, 2000

Melissa A. Smith
Attorney for U.S. REPUBLIC COMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document
MOTION BY THE CONSUMER SERVICES DIVISION FOR COMMISSION
ADOPTION OF THE ATTACHED PROPOSED SETTLEMENT on the Parties of
record in this proceeding by faxing and mailing via first-class mail a copy thereof
properly addressed to each party.

Dated at San Francisco, California this 15th day of August 2001.



Halina Marcinkowski

(END OF EXHIBIT 1 TO ATTACHMENT A)